IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1197 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALMUKUND R DAVE

Versus

NADIAD MINUCIPALITY

Appearance:

1. First Appeal No. 1197 of 1979

MR RN SHAH for Petitioner No. 1-4

MR MC SHAH for Respondent No. 1-2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 22/01/2003

ORAL JUDGEMENT

1. This appeal by the original defendants nos.1, 2, 5 & 6 is directed against the judgment and decree dated

25th October, 1978 passed by the learned Joint Civil Judge (Senior Division), Nadiad in Special Civil Suit no.117/1971 whereby the learned Judge decreed the said suit for Rs.12,145/- with cost and running interest at the rate of 6% per annum from the date of the suit till the payment or realisation in favour of the respondents nos.1 and 2, who are original plaintiffs, and against the appellants and respondent no.3 who are the original defendants.

2. Defendants were the Trustees of the R.J. Dave Adarsh Kelvani Trust and were running a Primary School in Nadiad. They were paid grants in the year 1964-65, 1965-66, 1966-67 which came to Rs.12,145/-. The suit was filed by the Nadiad Municipality and the Chairman of the Municipal School Board, Nadiad alleging that when Joint enquiry of accounts regarding income and expenditure of the school was carried out by the Education Inspector of Kaira District it was revealed that there were several irregularities in the accounts and in particular, though the tution fees was charged at Rs.5/- per student, only Rs.1/- per month per student was shown as income of fee. It was disclosed in the inquiry that even though defendants were receiving Rs.5/- per month per student as tution fees, they were showing tution fee at Rs.1/- only and Rs.2/- were shown as refreshment fee and Rs.2/- were shown as fees for English. According to the plaintiffs the defendants did not incur any deficit, but since no grant was to be paid to the Private Primary School which was making profits, the defendants had intentionally suppressed the income of the fees only with a view to obtaining grant from the defendants. When the fraud was discovered the plaintiffs filed the suit to recover the sum of Rs.12,145/-. The defendants in their written statement denied the allegations made in the plaint. According to them since they had filed a suit against the plaintiffs, the plaintiffs had filed the present suit as a counterblast. The learned Trial Judge, at the end of the trial, came to the conclusion that grant was to be paid to the school only if the school was in deficit and the allegations made by the plaintiffs in the plaint against the defendants were proved. He also held that the order dated 5th January, 1970 passed by the Education Inspector of Kaira District to recover the amount of grant was not illegal and against the rules of natural Justice as contended by the defendants. He also held that the suit was not barred by limitation. In view of these findings, he decreed the suit in favour of the plaintiffs as stated above. The appellants have, therefore, filed the first appeal challenging the judgment and decree passed by the learned Trial Judge.

Learned counsel appearing for the appellants has taken me through the judgment and evidence on record. The learned Judge has recorded the findings after appreciation of the entire evidence on record and it is not shown that the findings are in any way erroneous. There is no reason to interfere with the decree passed by the learned Trial Judge. There is no substance in this appeal and the same is dismissed. No order as to costs.

[M.C. PATEL, J.]

/phalguni/